
Governor Pete Wilson

LAFCOs, GENERAL PLANS, and CITY ANNEXATIONS



Governor's Office of Planning and Research

1400 Tenth Street
Sacramento, CA 95814
(916) 445-0613

Paul F Miner, *Director*

Antero Rivasplata, *Deputy Director, State Clearinghouse*

Kenneth Lee, *Planning Intern*

August 1997

LAFCOS, GENERAL PLANS, and CITY ANNEXATIONS

“It is the intent of the Legislature that each commission establish policies and exercise its powers ... in a manner that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns.

“Among the purposes of a commission are the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies based upon local conditions and circumstances.”

Cortese-Knox Local Government Reorganization Act of 1985, Title 5, Division 3, Part 2, California Government Code

One product of the 1985 legislative year was the Cortese-Knox Local Government Reorganization Act (Government Code Section 56000, et seq.) which combined the Knox-Nisbet, Municipal Organization, and District Reorganization Acts into a single statute. The Cortese-Knox Act, while not altering existing policies to a great extent, has spotlighted the role of the Local Agency Formation Commission in annexation proceedings.

In response to this legislation, the Governor’s Office of Planning and Research (OPR) has prepared this advisory memo relating the city annexation process to CEQA and local general plans. The streamlined Cortese-Knox Act provides opportunities for dovetailing the requirements of the Planning and Zoning, CEQA and annexation laws which, in turn, can promote efficiency in processing applications.

Although the Cortese-Knox Act addresses district formation, incorporation, and other types of government organization, this memo will exclusively concern itself with city annexations. Consequently, it is primarily aimed at the non-LAFCO planner and city official and is not intended to be an in-depth, technical discussion of the Cortese-Knox Act. It is based upon OPR’s reading of current state statute, recent case law and the *General Plan Guidelines*. References are to the California Government Code unless otherwise indicated.

For a comprehensive review of the Cortese-Knox Act, refer to *Longtin’s California Land Use*, 2nd Edition. This general reference addresses planning, zoning, subdivisions, sign controls, and exactions as well as LAFCO activities.

Background: The Role of the LAFCO

.....

Until January 1, 1986, the authority for local boundary changes and municipal reorganizations such as annexations, incorporations, and the creation of special districts came from three separate, but interrelated State laws: the Knox-Nisbet Act, the Municipal Organization Act (MORGA), and the District Reorganization Act. Long-standing difficulties in implementing and reconciling these distinct, and at times incompatible, laws led the Legislature to adopt the Cortese-Knox Local Government Reorganization Act. The Act combines these statutes into a single law which eliminates duplicate, seldom used, and incompatible sections.

The Cortese-Knox Act is the framework within which proposed city annexations, incorporations, consolidations, and special district formations are considered. This law establishes a Local Agency Formation Commission (LAFCO) in each county, empowering it to review, approve or deny proposals for boundary changes and incorporations for cities, counties, and special districts. The Act mandates specific factors which the LAFCO must address when considering annexation proposals. The LAFCO in turn establishes the ground rules by which the affected city will process the annexation. Each LAFCO is made up of elected officials from the county, local cities, special districts, and a member of the general public. The specific membership of each LAFCO depends upon the statutory requirements of the Cortese-Knox Act.

The state has delegated to each LAFCO the power to review and approve or disapprove with or without amendment proposed annexations, reorganizations, and incorporations. In granting these powers, the state has

occupied the field of annexation law to the exclusion of local legislation. Therefore, a city or county cannot take actions which frustrate or conflict with state annexation procedures. For this reason, a city cannot adopt a local ordinance which would allow city voters to pass sole judgment on proposed annexation proceedings (*Ferrini v. City of San Luis Obispo* (1983) 150 Cal.App.3d 239 and *L.I.F.E. v. City of Lodi* (1989) 213 Cal.App.3d 1139).

Each LAFCO operates independently of the state. However, it is expected to act within a set of state-mandated parameters encouraging “planned, well-ordered, efficient urban development patterns,” the preservation of open-space lands, and the discouragement of urban sprawl. The Legislature has taken care to guide the actions of the LAFCOs by providing state-wide policies and priorities for the consideration of annexations (Section 56844), and by establishing criteria for the delineation of spheres of influence (Section 56425).

The City’s Role in Planning and Regulating Land Use

Local governments have the primary responsibility for the planning and regulation of land uses. State law requires that each city and county prepare and adopt a “comprehensive, long-term general plan for the physical development” of the community. This general plan must cover all incorporated territory and should go beyond the city limits to include “any land outside its boundaries which...bears relation to its planning.” (Section 65300)

The way in which a city plans its surrounding area can be an important statement of its future intent. It is one means by which city officials can indicate to state and local governments their concerns for the future of surrounding unincorporated lands. Since the general plan is a policy document with a long-term perspective, a city’s general plan may logically include adjacent territory which the city ultimately expects to annex or to serve, as well as that which is of particular interest to the city. The city’s “sphere of influence” (which is established by the LAFCO) describes its probable physical boundaries and service area and can therefore be used as a benchmark for the minimum extent of the planning area. The city may choose to plan for land uses beyond its sphere when coordinating plans with those of other jurisdictions. (1990 *General Plan Guidelines*)

Through legislation and through case law, the general plan has assumed the status of the “constitution for all future development” (*Citizens of Goleta Valley v. Board of Supervisors of the County of Santa Barbara* (1990) 52 Cal.3d 553). As a result, most local land use decisionmaking now requires consistency with the general plan. The same is true of public works projects (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988), conditional use permits (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176) and, in several recent cases, voter zoning initiatives (*Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, *Goleta, supra* and *Marblehead v. City of San Clemente* (1991) 226 Cal.App.3d 1504).

Annexations

Annexation is the means by which an existing city extends its corporate boundaries. In its most basic form, annexation can be considered a four part process. The steps are generally outlined below.

Prefiling. An application may be filed with the LAFCO by petition of affected landowners or registered voters, or by resolution from the involved city. Prior to filing, the proponent should meet with the LAFCO’s executive officer to establish the minimum requirements for processing, then meet with any affected special districts and agencies to agree upon a taxation scheme and needed property tax transfers. Commission action is subject to CEQA and an initial study will be required. In many cases, the LAFCO will require rezoning of the site by the affected city. This makes the city lead agency for CEQA documents and the LAFCO a responsible agency. In most cases, the city (or the private proponent) will be responsible for preparing the initial study and the environmental document under LAFCO direction.

Filing and LAFCO consideration. LAFCO has 30 days in which to review an annexation application and determine that it is complete for processing. Once the application has been accepted as complete, the LAFCO will analyze the proposed annexation in light of the commission’s state mandated evaluation criteria and responsibilities and its own adopted policies. Before the executive officer issues a certificate of filing, the involved city, county, and affected special districts

are required to negotiate the allocation of property tax revenues during a 30-day mandatory negotiation period, but are not required to reach agreement (Rev & Tax Code Section 99 and 71 Ops. Cal. Atty. Gen. 344 (1988)). Nonetheless, the executive officer is prohibited from issuing a certificate of filing if an agreement has not been reached, which is a precondition to LAFCO's hearing on an application for annexation (*Greenwood Addition Homeowners Association v. City of San Marino* (1993) 14 Cal.App.4th 1360).

LAFCO may approve, conditionally approve or deny the proposed annexation. The lead agency, whether it is the LAFCO or the involved city, must comply with CEQA requirements prior to the LAFCO's action. The conditions set by the commission's resolution will be the ground rules for the conducting authority's subsequent action (Section 56851). Within 30 days of the LAFCO's resolution, any person or affected agency may file a written request with the executive officer for reconsideration of the annexation proposal (Section 56857).

Proceedings of the Conducting Authority. The involved city, acting as the "conducting authority" in accordance with the requirements of the Cortese-Knox Act and LAFCO, will hold a public protest hearing to determine whether the proposed annexation must be approved without an election, terminated, or whether an election must be called to determine the proposal's outcome. The number of protests received before and during the hearing will determine which of these options the city must follow. If the annexation is approved, the city will forward a resolution containing the results of its activities to the LAFCO for final review and ratification. If the proposal is terminated, a resolution to this effect will be forwarded to the LAFCO and no new annexation may be proposed on the site for at least one year, unless the LAFCO waives the limitation upon finding that the limitation is detrimental to the public interest (Sections 56855 and 56851). When an election is held, only residents of the proposed city or territory have a right to vote on the issue of annexation (Sec. 57103 and *Board of Supervisors v. LAFCO* (1992) 3 Cal.4th 903).

Final Certification. When the LAFCO executive officer is satisfied that all elements of the Act have been properly addressed, that the annexation approved by the city conforms to the annexation proposal approved by the Commission, and that all conditions have been met, he or she will certify that the annexation is

complete. If the executive officer finds the city's submittal to be incomplete, then it will be returned to the city for completion. The annexation is not complete until it has been certified by the executive officer. The commission may establish an "effective date" for the annexation. Alternatively, the effective date will be the date the certificate of completion is recorded by the County Recorder.

Consistent Annexations

.....

State Law does not mandate that annexations conform to local general plans beyond requiring that the LAFCO consider "consistency with the city or county general and specific plans" (Section 56841(g)). Nonetheless, the statutes contain numerous references that attempt to link local land use and open-space policies to the annexation process (Sections 56300, 56375, 56377, 56425, and 56841). Accordingly, the Commission should attempt to harmonize local planning policies with the intent of the State legislation. Where there is a clear conflict, such as incompatibility between city and county general plans, the State precepts should prevail.

The factors that the LAFCO must consider in reviewing annexation proposals include, but are not limited to, the following (Section 56841):

1. Population, population density, land area and use, per capita assessed valuation, topography, natural boundaries, drainage basins, proximity to populated areas, and the likelihood of significant growth during the next ten years.
2. Need for organized community services, present cost and adequacy of government services and controls, probable future needs, probable effect of the annexation and of alternative courses of action on the cost and adequacy of services and controls in the area and vicinity.
3. The effect of the proposed annexation and of alternative actions on adjacent areas, on mutual social and economic interests and on the local government structure of the county.
4. Conformity of the proposal and its effects with LAFCO policies on providing planned, orderly, efficient patterns of urban development and with state policies and priorities in conversion of open-space lands to other uses.

5. Effect of the proposal on maintaining the physical and economic integrity of lands in an agricultural preserve in open-space use.
6. Clarity of the boundaries of the territory, the non-conformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory and other similar matters affecting the proposed boundaries.
7. Consistency with appropriate city or county general and specific plans.
8. The sphere of influence of any agency which may be applicable to the proposal being reviewed.
9. The comments of any affected agency.

Under Government Code Section 56375(a), a LAFCO is required to approve a city's request to annex land adjacent to its borders when the commission finds that either of the following circumstances exist:

1. The land is substantially surrounded by the city or the Pacific Ocean, is substantially developed or developing, is not prime agricultural land, is designated for urban growth on the city's general plan, and is not within the sphere of influence of another city.
2. The land is located within an urban service area designated by the LAFCO, is not prime agricultural land, and is designated for urban growth on the city's general plan.

Both of these conditions require review of the annexing city's general plan by the LAFCO. A general plan which reflects the proposed annexation improves the chances that the annexation will be approved.

Sphere of Influence

LAFCOs exercise both regulatory and planning functions. While annexations are a regulatory act, LAFCOs' major planning task is the establishment of "spheres of influence" for the various governmental bodies within their jurisdictions. As described by Section 56076, the sphere is to be "a plan for the probable physical boundaries and service area of a local government agency." In preparing the written study required to establish each sphere, a LAFCO must consider and make written determinations with regard to the following factors (Section 56425):

1. The present and planned uses in the area, including agricultural and open-space lands.
2. The present and probable need for public facilities and services in the area.
3. The present capacity of public facilities and the adequacy of public services which the agency provides or is authorized to provide.
4. The existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency.

The sphere of influence is an important benchmark because it defines the primary area within which urban development is to be encouraged (Sections 56377(b) and 56841). In a 1977 opinion, the California Attorney General stated that sphere of influence should "serve like general plans, serve as an essential planning tool to combat urban sprawl and provide well planned efficient urban development patterns, giving appropriate consideration to preserving prime agricultural and other open-space lands" (60 Ops. Cal. Atty. Gen. 118).

Along this same line of reasoning, the California Appellate Court has held that spheres of influence must be adopted before an annexation to the affected city or district can be considered. (*Resource Defense Fund v. LAFCO* (1983) 138 Cal.App.3d 987). Section 56650.5 limits the validity of annexation proposals in specified urban areas unless the request is consistent with the applicable spheres of influence. Section 57025 requires LAFCO to send notice of pending annexation hearings to those affected agencies whose spheres contain territory within the proposal.

LAFCO has sole responsibility for establishing a city's sphere of influence. Further, the LAFCO is not required to establish a sphere that is greater than the city's existing boundaries. LAFCO may take joint action to approve an annexation while at the same time amending the city's sphere of influence. (*City of Agoura Hills v. LAFCO* (1988) 198 Cal.App.3d 480).

LAFCO officials and local decision-makers recognize the logical assumption that the lands lying within the sphere are those that the city may someday propose to incorporate. If the city finds that annexing an area outside its sphere would be in the public interest, it should request that its sphere be amended to include that area.

Prezoning

A city may choose to prezone unincorporated territory that it expects to annex in the future. The proposed zones must be consistent with the city general plan and a public hearing must be held just as with a common rezoning proposal. Additionally, the LAFCO may require that the city prezone the area within a proposed annexation. It may not, however, dictate the specific zoning to be applied by the city.

There are two advantages to prezoning. First, the city will have zoning in effect immediately upon annexation. Local residents will thereby have prior knowledge of the land use regulations that would affect them should annexation occur. Secondly, prezoning acts to serve notice to the LAFCO of the city's intentions regarding its adjacent areas. In circumstances where development purposes are not made known to the LAFCO at the time of the annexation proposal, the Commission will review the request on the basis of the adopted plans and policies of the affected cities and county. Prezoning will be considered a part of this review.

In order to be effective, the prezoning must be consistent with the city general plan. In at least one instance, the Appellate Court has upheld a LAFCO's authority to deny an annexation where a city had prezone a site agricultural, but where the "ultimate intended use" as represented on the general plan was residential and industrial. The conversion to agricultural land had conflicted with adopted LAFCO policy. (*City of Santa Clara v. LAFCO* (1983) 139 Cal.App.3d 923.)

Environmental Review

Both case law and the CEQA guidelines support the applicability of CEQA to annexations and to related sphere of influence amendments. The environmental document should be prepared early in the process and should address all aspects of the project, not merely the annexation.

In 1975, the California Supreme Court held in a Ventura County case that annexations are to be considered projects under CEQA and subject to environmental analysis. Where the LAFCO had "proceeded as if CEQA did not exist" its decision was enjoined until an EIR could be prepared. The Supreme Court drew

similarities between the purposes of CEQA and the annexation laws then in effect, requiring that the LAFCO harmonize these purposes through the preparation of an EIR (*Bozung v. LAFCO* (1975) 13 Cal.3d 263).

The CEQA Guidelines defines a project as the whole of an action, not the separate governmental actions that may be necessary to complete it. Ideally, a single environmental document will be prepared to address the annexation as well as all related general plan amendment, prezoning, sphere of influence or other proposals. The document should address, among other concerns, the policy issues raised in Sections 56301, 56375, and 56841. If an EIR has been prepared and the annexation is approved, the LAFCO and the city will be responsible for making findings pursuant to Sections 15091 and 15093 of the CEQA Guidelines justifying their actions.

The courts have had differing opinions over the application of CEQA to sphere of influence determinations. In *City of Livermore v. LAFCO* (1986) 183 Cal.App.3d 681, the court held that CEQA was invoked when the Alameda County LAFCO changed the guidelines it used for determining spheres of influence. However, the court in *City of Agoura Hills v. LAFCO* (1988) 198 Cal.App.3d 480 concluded that establishing a sphere was not automatically a project under CEQA. According to that court, "the fact that spheres of influence are recognized as important factors in annexations does not compel the conclusion that they are per se 'projects' subject to CEQA." The *Agoura* court did not dismiss the possibility that under other circumstances, a sphere of influence determination could be a project.

Environmental documents prepared for annexations should also address all related prezoning or general plan amendments as well. (*Bozung v. LAFCO, supra*; *Pistoresi v. City of Madera* (1982) 138 Cal.App.3d 284.) Conversely, when prezoning is proposed the environmental document should discuss the effects of annexation. For example, in *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, the court held that an EIR prepared for a prezoning and general plan amendment was insufficient because it failed to consider the issue of the related annexation that was then in progress. Amending the sphere of influence may also be subject to CEQA if significant effects are possible. (63 Ops. Cal. Atty. Gen. 758 (1980)). The city proposing an annexation must provide the LAFCO sufficient information to satisfy the environmental analysis requirements. (*City of Santa Clara v. LAFCO, supra*.)

When rezoning is proposed as part of an annexation request, the city is deemed the lead agency for CEQA purposes (Section 15051 of the CEQA Guidelines). As lead agency, it will be responsible for preparing the necessary environmental document.

Local agencies using the categorical exemption that Section 15319 of the CEQA Guidelines provides for annexations should use it carefully. If the annexation will result in extending utilities beyond the level required to serve existing development, this exemption cannot be employed (*Pistoresi v. City of Madera, supra*; *City of Santa Clara v. LAFCO, supra*). Use of Section 15319 is limited to those instances where: (1) development already exists at the density allowed by the current zoning or rezoning; (2) the utilities which may be required for the ultimate use will not serve more than the development in existence at the time of annexation; and (3) the annexation consists of individual small parcels of the minimum size for those facilities which are included in Section 15303 of the CEQA Guidelines.

Summary

.....

This summarizes the preceding points:

1. General Plan Consistency

Annexations should be part of the community's comprehensive plan for its future. Annexation should occur in an orderly and logical manner; consistent with both the city general plan and with state mandates regarding service delivery and the conservation of agricultural and open-space lands.

If the annexation area has not been included or addressed in the city general plan, then an amendment to the plan should be considered. When evaluating the proposal for consistency with the plan, special consideration should be given to the annexation's impacts on existing and planned public services, agricultural and open-space lands, city housing supplies for all economic levels, and the adopted sphere of influence.

2. Sphere of Influence

If the area proposed for annexation by the city lies outside its sphere of influence, then the city must request an amendment to its sphere prior to filing the annexation request with the LAFCO. The sphere proposal should be addressed in the environmental document.

3. Environmental Analysis

The environmental document prepared for the annexation should be comprehensive in scope. That is, necessary rezoning and related applications should be evaluated as part of the project even though they may not be under consideration for some time. It should be possible to use a single environmental document to address the whole project.

4. Rezoning

If the city is initiating the annexation, the site should be rezoned to be consistent with the city general plan. Rezoning hearings can alert the city to opposition or to issues of particular concern prior to its filing an application with the LAFCO. The rezoning, general plan amendment (if necessary), and comprehensive environmental document should be completed before the annexation proposal is submitted to the LAFCO for consideration. When rezoning is involved, the city is the lead agency for purposes of CEQA.

5. LAFCO Application

When the city initiates an annexation, it should provide the LAFCO with as much information about the project as possible. This would include general plan, rezoning, and environmental analysis data. If the environmental document prepared for rezoning or general plan amendment proposal is comprehensive, the LAFCO should be able to use it for the annexation, thereby streamlining the process. We suggest that annexation proponents meet with the LAFCO executive officer prior to filing in order to review the LAFCO's application requirements.

6. Public Review

The city should encourage public review and comment at every stage of the process. While the Cortese-Knox Act provides opportunities for review at the LAFCO and city hearing levels, the general plan and rezoning procedures offer additional possibilities for input. Early public response is helpful in assessing public sentiment and identifying areas of concern.

Hearings should be coordinated if feasible. Addressing more than one topic at each hearing may clarify the intent and the ramifications of the overall project. Candidates for combined hearings are: rezoning and general plan amendment; and rezoning, general plan, and annexation (by the city as conducting authority). Ask the involved LAFCO whether it is possible to combine hearings.

At the same time, hearings can be educational. They offer an opportunity to explain annexation procedures and the responsibilities of the city and the LAFCO. For example: residents are often confused over the ability of a city, under certain circumstances, to annex territory without an election (Section 56375(d)).

Conclusion

.....

Both the city and the LAFCO have a responsibility to see that the proposed expansion of corporate limits complies with the procedures laid out in the Cortese-Knox Act, adopted LAFCO policies, and the two state policies iterated at the beginning of this memo. At the

same time, it is important that they recognize that it is their responsibility to coordinate the annexation process through cooperation and mutual discussion. The LAFCO can provide the city with a great deal of information about the annexation process and the enabling legislation.

Finally, when considering the annexation proposal, both the city and LAFCO must look beyond the immediate to the future impact of the total project on city services, sources of tax revenue, historic growth trends, the city center, and neighboring communities and cities. Annexation does not occur in a vacuum. The land's inter-relationship with the surrounding world and the community changes that could occur as a result of annexation should be considered.

TABLE OF CASES CITED

CASES	PAGE
<i>Board of Supervisors v. LAFCO</i> (1992) 3 Cal.4 th 903	5
<i>Bozung v. LAFCO</i> (1975) 13 Cal.3d 263	7
<i>Citizens of Goleta Valley v. Board of Supervisors of the County of Santa Barbara</i> (1990) 52 Cal.3d 553	4
<i>City of Agoura Hills v. LAFCO</i> (1988) 198 Cal.App.3d 480	6, 7
<i>City of Livermore v. LAFCO</i> (1986) 183 Cal.App.3d 681	7
<i>City of Santa Clara v. LAFCO</i> (1983) 139 Cal.App.3d 923	7, 8
<i>Ferrini v. City of San Luis Obispo</i> (1983) 150 Cal.App.3d 239	4
<i>Friends of B Street v. City of Hayward</i> (1980) 106 Cal.App.3d 988	4
<i>Greenwood Addition Homeowners Association v. City of San Marino</i> (1993) 14 Cal.App.4 th 1360	5
<i>Leshar Communications, Inc. v. City of Walnut Creek</i> (1990) 52 Cal.3d 531	4
<i>L.I.F.E. v. Lodi</i> (1989) 213 Cal.App.3d 1139	4
<i>Marblehead v. City of San Clemente</i> (1991) 226 Cal.App.3d 1504	4
<i>Neighborhood Action Group v. County of Calaveras</i> (1984) 156 Cal.App.3d 1176	4
<i>Pistoresi v. City of Madera</i> (1982) 138 Cal.App.3d 284	7, 8
<i>Resource Defense Fund v. LAFCO</i> (1983) 138 Cal.App.3d 987	6
<i>Rural Landowners Association v. City Council</i> (1983) 143 Cal.App.3d 1013	7

OPINIONS OF THE ATTORNEY GENERAL

60 Ops.Cal.Atty.Gen 118 (1977)	6
63 Ops.Cal.Atty.Gen 758 (1980)	7
71 Ops.Cal.Atty.Gen 344 (1988)	5